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DEFENDING AN HONEST MAN

Cochise County Bar Favors Judge Davis

BY RINGING RESOLUTIONS

Upon receipt yesterday, of a Tucson paper purporting that charges had been filed at Washington again t Judge George R. Davis, the members of the Tombstone bar, including attorneys from all sections of the Territory, arranged for an association meeting today and, accordingly, at 1 o'clock thi afternoon the bar was called together, Colonel Wm. Herring was chosen chairman and Charles Bowman acted as secretary. Colonel Herring stated that he had been a member of the bar for twenty years, and had seen many assaults made upon the character of the judiciary, but never had he known of an assault so wicked and entirely groundless as this one on Judge Davis. The colonel paid a high tribute to Judge Davis' ability and integrity and caustically criticised his assailants. Resolutions endorsing Judge Davis were read. Mr. English moved the adoption of the resolutions and Judge Reilly seconded the motion. Messrs. English, Reilly, Land, Morgan and Hazzard spoke to the motion, reiterating the sentiments contained in the resolutions. Mr. English hazarded the statement that whoever preferred the charges of incapacity and lack of integriry did not want an honest man on the bench. A motion prevailed that the Chair man and Secretary telegraph a summary of the resolutions to the Attorney General at Washington, and that a copy be engrossed and signed by ther bar. Following are the resolutions adopted:

Resolved, That the Bar of Cochise county, First Judicial District, Territory of Arizona, has learned with surprise that charges have been filed in the department of justice at Washington reflecting upon the integrity and judicial capacity of Hon. George R. Davis, district judge sitting in this judicial district.

Resolved, That in the opinion of this Bar an assault upon the integrity of Hon George R. Davis can only come from malicious and evil minded persons, who are unworthy of consideration or belief.

Resolved, That Judge Davis has at all times evinced in his rulings and judicial work the utmost conscientiousness in fairly and honestly reaching a just determination of the issues presented for his consideration.

Resolved, That in his grasp of the various legal propositions, which have confronted Judge Davis, and his determination of the same, he has shown the most laborious and intelligent investigations, and that his judicial capacity in reaching correct results in the causes tried before him have won for him the admiration, confidence and respect of this Bar, and that we brand his cowardly assailants with the basest motives in their assault upon his character and capacity as a judge of this court.

Resolved, That Judge Davis by his unremitting industry upon the bench has greatly lightened the burdens of counsel, and that his ability and high courage in encountering and overthrowing all immoral and malevolent schemes of every nature entitle him to the unstinted support of all classes of our citizens.

LOST—A package containing a Black Silk Dress Skirt, with two purple dust ruffles, between Tombstone and Gleeson, on Sunday night, the 24th. A suitable reward will be given to any one returning same to this office. 9-39 2t.

A CORPORATION'S EARNINGS

Fabulous Wealth of Southern Pacific Company

RAILROADING WILL PAY

The net earnings of the Southern Pacific this year were $2,558.317 as against $2,496,666 for the corresponding month of last year, and the net earnings for the months of July, August and September were $7,899,051 as against $6,420,272 for the corresponding months of the previous year. At this rate of increase the gross earnings of the company for the present fiscal year will exceed those of last year by $4,600,000, and will approximate $54,000 000.—Star.

THE DECEMBER TERM OF COURT

Full Report of Business Transacted During Week

OF INTEREST TO PUBLIC.

F. Odems and P. Burola, defaulting witnesses sentenced to two days in the county jail for contempt of court.

Edwin Montgomery vs. Nannie Montgomery, decree of divorce granted in favor of plaintiff, Edwin Montgomery.

Maxfield vs. Maxfield, decree of divorce in favor of plaintiff.

Grand jury made a further report and returned indictments as follows: Territory of Arizona vs. Smith Turner, assault with intent to commit murder; Territory of Arizona vs. Andrew Griffin, murder; Territory of Arizona vs. Manuel Somora, assault with intent to commit murder.

Defendants were arrigned and granted statutory time to plead to indictments.

The case against Frank Malley was ignored by the grand jury; case ordered dismissed and defendant released.

The case against George W. Hammond referred to next grand jury for investigation.

Petition of J. E. Kenny et al, vs. S. K. Williams, for a writ of certierari—denied.

Bernard vs. Overacker et al continued for term by agreement.

Copper Queen Consolidated Mining company vs. County of Cochise et al. Demurrer of defendants to plaintiff's amended complaint overruled. Case now on trial.

TRIAL JURY.

Following is the venire for the trial jury to convene this p. m.:

W Allison	Edgar Fletcher
Geo Clawson	C C Finlayson
W Grenfell	Lewis Hunt
T J Lyon	Aug Hickey
Ed Dunbar	Jas Letson
Wm Jones	W E Bailey
W D Kinsey	Jesse Jackson
Gus Gottschalk	Geo Bernard
A L Armstrong	Robt Brooks
H Ash	E C Doll
E G Adams	Clinton Kellar
J L Amalong	John Jolly
J A Lamb	Chas H Holz
J W Blair	G C Ballinger
J J Bowen	Dan Hoesch

The following is continuation of argument Saturday afternoon as the PROSPECTOR went to press:

At the calling of court Judge Mitchell proceeded with argument on the demurrer for the Copper Queen. He said mines are subject to taxation in this territory as personal property. This was not an assessment, but an arbitrary exaction. Plaintiff complains that a few of plaintiff's claims were taken for assessment, while there are thousands of unpatented claims in Cochise county not assessed at all. The Board sat to equalize the property of the county, not of any individual. It was no concern of the Copper Queen Con. M. Co. to have its property equalized. For the purposes of the demurrer the complaint is admitted. It is alleged that the Board took no evidence in making the raises over the Copper Queen, but acted arbitrarily. By any known method of arriving at the value of those properties, the assessment is grossly excessive. The burden of taxation is laid on patented mines. Under bu dens of taxation for territorial purposes are, by this action, laid upon Cochise county and the taxpayers and especially upon this plaintiff. But $44,641 is the full cash value of the hoisting works, including the Spray and Holbrook; and yet the Board raised the valuation of hoist and improvements of the Spray $50,000 and Holbrook $10,000. The general rule is, to assess merchandise at 75 per cent of the invoice price. Cash value under our statute is the value of which a creditor would take the property in payment of a just debt and from a solvent debtor. A better definition would be, what the property would bring at a fair public sale. A creditor might not care to take a particular kind of property at all. Complaint will be sustained when the valuation is so grossly disproportionate as to make it fraudulent. The question is not alone whether the property is assessed at what it is worth, but it is assessed at the same rate as other property of the same class. Plaintiff is in no way to blame, but the fault is with the agents of the county, and the remedy is with the voters and not with the court.

Mr. English closed for defendant. He said probably it is true that Board of Supervisors have not in the past done their duty, and that may be the reason why the voters at the last election elected a new Board. The court should disregard irrelevant matters in the complaint. As evidence that the Board acted in good faith they reduced their proposed valuation $500,000. Plaintiff failed to return fifteen patented mines belonging to the Lowell & Arizona. In assessing these mines the Board reduced the proposed valuation of $469,000 to $54,000 which does not indicate the Board acted capriciously and arbitrarily. The complaint alleges that it was the custom of Boards, notwithstanding the statute, to assess mines as land at $5.00 per acre. Because other Boards violated the law, they complain that this Board did not do the same. Before a plaintiff can enjoin the collection of a tax on the ground that the assessment is excessive, it must be alleged that the property was listed by the owner at its full cash value. In this case the mines were returned at $5.00 per acre. The fact that several thousand mining claims in Cochise county were not assessed was because most of them were worthless. What has the Board of Equalization of Cochise county to do with the Boards in the other counties? Mere excessive valuation, unless it furnishes conclusive presumption of fraud, a court will not enjoin the collection of the tax. The court cannot conclusively presume fraud from the fact that the valuation of the hoisting works was raised from $44,641 to $58,000. Mr. English contended that no tender had been made. The money offered, fourteen thousand odd dollars, was offered as "the taxes" (meaning all the taxes) on the property of plaintiff, and not as the taxes conceded to be due. Counsel submitted the demurrer at 4:30.

At the calling of the case of the Copper Queen vs. Cochise Co. this a m Judge Davis stated that argument had been very full, clear and satisfactory to the court. In the citation of authorities, consel had shown a degree of industry worthy of the importance of the cause. For the purposes of the general demurrer, defendants admitted all of the facts in the complaint which were well pleaded. He commented at length upon the authorities quoted in the PROSPECTOR'S report from day to day. There are parts o the complaint he said which the court deems surplusage, and when it come to the presentation of proofs he will probably so hold. The main contention of the county is that fraud was not alleged in the complaint in a proper manner. Commenting upon that part of the complaint alleging fraud, the court asked: "Admitting those things to be true, is not the plaintiff entitled to relief?" If the Board acted upon its resentment, its caprice and prejudice, with intent to wrong, defraud and oppress, it is guilty of fraud. The Board failed to cause the assessor, according to the complaint, to add to the assessment roll several thousands of unpatented mines of great value in the county, thus conspiring to place the whole burden of taxation on property of this class upon patented mines If the Board fails to exercise its judgment, its acts, like other wrongs, are subject to the law of correction. The court held that it seemed clear that enough was alleged to show prejudicial conduct on the part of the Board. Upon the question of tender the court held that a tender must be free and unconditional. It must, however, be made for some purpose. Plaintiff is entitled to have an understanding with the Treasurer what the tender is for. On the question of plaintiff having a remedy at law, he said that having no statute at the time of the commencement of this action requiring payment of taxes before suit can be brought, this point is not well taken. The court held that the complaint was not obnoxious to the general demurrer, and the demurrer was overruled.

Mr. English asked until 2 p. m. to prepare for trial, and Col. Herring joined in the request, and 2:30 p. m. was fixed as the time for beginning the trial. Counsel thought the case could be submitted by Tuesday noon.

At the opening of court Smith Turner pleaded not guilty, and his trial was set for the 12th.

Andrew Griffin pleaded not guilty, and his trial was set for the 13th.

Rodriguez pleaded not guilty and his trial was set for the 13th.

The court announced that civil cases would be taken up during the trial of criminal cases, whenever there is a lull in criminal business

Special venire of twenty-five trial jurors issued returnable December 11th.

John W. Blair, Jas Letson, Robt Brooks, Ed Dunbar, trial jurors excused.

Henry Beumler admitted to practice law.

Chas. W. Edney vs. Clara E. Edney—divorce granted.

Ex-Supervisor Montgomery was the first witness called for plaintiff in the case of the Copper Queen vs. Cochise County et al. Objection was made to any testimony as to what had been the practice of the Board heretofore in making assessments by defendants. Objection sustained.

The question was asked whether it was the practice of the Board to assess unpatented mines. Objected to and objection sustained.

The issue is, did this Board act fraudulently in failing to list other like property at equal value.

Mr. A. L. Grow was next called. He has shipped 160 tons of ore from the Tranquility during 1901, some of which was rich, some not. Colonel Herring sought to shew by this witness that there were many other patented mines of great value which were assessed at $5 per acre, and thus a discrimination was made against plaintiff in assessing eight of its mines at $3,150,000. Plaintiff was given leave to amend the complaint by inserting the word "patented" in certain places where "mining claims" are mentioned for greater certainty of description.

Mr. English objected to further proceedings until a proper tender was shown to have been made of the taxes conceded to be due.

Colonel Herring asked for five minutes' time to allow Mr. Walter Douglas, superintendent of the Copper Queen, and himself, to repair to the treasurer's office and pay the amount considered to be due on taxes by plaintiff for 1901, to-wit, $14,133.12. Time was allowed and the payment was tendered.

Objection was made by plaintiff to testimony regarding the value of other mines, as no definite description or specification of what mines were omitted from the assessment roll is made in the complaint. Defendant contended that this testimony was irrelevant, unless it was shown the mine about to be described was like the plaintiff's mines. Mr. Grow said $12,000 had been realized from the Tranquility during 1901. He could testify as to the value of any mining claims within his knowledge during that period of 1901, when the Board of Equalization could have acted upon it.

C. F. Halderman was next called by plaintiff. He knew the Copper Belle mines at Gleeson. Hauls ore from those mines, from 15 to 17 tons per trip. It is sulphide ore, containing copper. Fifteen or twenty teams are hauling ore from those mines. A couple of carloads of ore have been shipped from Ryan Bros'. mines. He knows the Peabody mine. Three teams have been hauling copper ore from this mine to the railroad. He knows the Douglas mine, known as the Good Hope, and that ore has been hauled from there. Ore is being hauled from the Golden Queen to a mill in Cochise. One four-horse team is hauling from this mine. He knows of no other mines having as large works as the Copper Queen in Cochise county. He knew of no like property to that of the Copper Queen in this county. He knew nothing of the value of the Peabody or Copper Belle mines. Counsel for defendant asked that all of the testimony of this witness be stricken out. This request was denied.

Harry Clifford testified that a large amount of ore had been hauled from the Peabody mine and shipped to El Paso. He also knew of ore hauled from Gleeson camp. Did not think the mines he described were like the Copper Queen. Knows of no mines in the county like the Copper Queen mines.

Recess was then taken until 7:30 in the evening.

After recess Mr. English gave notice that he would call Mr. Grow for further cross-examination.

P. B. Soto was the first witness called. Shipped ore for Chris Grauer of the Chiricahua mountains. He shipped two carloads last spring; shipped two carloads of ore for J. C. Rigge from the Chiricahua mountains from the Rigge mines.

Colonel Herring held the view that the fact that the Board failed to list several thousand unpatented mines, many of which are valuable, shows discrimination and negligence of duty.

The court stated that much of the evidence, such as the foregoing, would have to be connected with the issues to make it of value in the case. The knowledge of the existence of the unpatented mines testified about on the part of the board, would have to be shown, unless the testimony referred to was properly connected, it would have no weight with the court. Rigge' mines yielded $900 to the car. About $340 was yielded per car by the Grauer mines. These mines, in the judgment of the witness, were not like the Copper Queen mines.

Supervisor York was the next witness. Never examined any of several properties of the Copper Queen named to him with a view to determining their value. Mr. Reay and Mr. Walter Douglas testified before the board regarding the hoist and improvements on the Holbrook mine. Mr. English testified regarding the value of the hoisting works on the Silver Spray. Witness did not remember who were witnesses before the board to the different items of assessment, the valuations of which were raised. The raise of $273,000 on the merchandise of the Copper Queen store, he said was made on the testimony of Mr. Walter Douglas. Mr. Douglas stated the hoist on the Silver Spray cost the Copper Queen company about $50,000. The goods in the Copper Queen store Feb. 1st, of this year inventoried $288,000, not including stock in the branch store at Naco. Mr. Reay and others stated that the Silver Spray hoist cost $100,000. Mr. Douglas said he did not know the value of the mines of the Copper Queen and would have to refer the board to the New York office for the value of the output of the mines. Witness stated that from all he could learn the Copper Queen property was worth what the board valued it at, if not more. Witness had no motive in voting to raise valuations of plaintiff's property than to place the just cash value on it. Heard that the Silver Spray was one of the most valuable mines of the Copper Queen company. Mr. Reay Mr. English and Mr. Benton spoke about this mine, and it was upon the statements that the raise of $1,000,000 was made, also based the raise of the value of the Holbrook to $1,000,000. He was asked in reference to several mines by name, and stated that it was upon similar reasons given about it, that valuations were increased in each case. He stated that the board did not decide to reduce the rate of taxation until after the assessment was equalized.

P. J. Delehanty was called next. He never examined the several mines of plaintiff with a view of determining their values. Never caused any examination to be made of either of these properties. Witness corroborated Mr. York regarding evidence taken before the Board, and values testified to.

Mr. Benton thought the hoist and improvements on the Silver Spray were worth $75,000. Mr. Reay placed a like valuation on this property. Mr. English suggested the Silver Spray was worth $1,000,000, and Mr. York also. Like statements were made by the same gentlemen, also by Mr. Reay. Mr. Douglas told the board it was none of the business of the board what the mines were worth. The board considered the amount of ore taken out of the mines, and the respective locations of them in valueing them. Witness stated he had no motive in voting for the raises other than to place the just cash value upon them. Mr. Douglas gave no information concerning the mines from which ore was taken.

P. J. Delehanty was recalled as a witness by plaintiff. He stated that no discussion was had relative to the assessment of unpatented mining claims. The Board presumed that the assessor had assessed all of the property assessable. He thought there were a good many mining claim in the county. Board assessed all producing mines in the county, those from which ore was being taken, o which they had knowledge. Patented mines which had no value were assessed at $5 per acre, and mines which were producing ore were assessed at what they were worth. The Board ordered the assessor to place on the roll all claims they knew of. They ordered fourteen claims belonging to the Copper Queen to be placed on the roll, which were not returned by the company. Witness arrived at his conclusion concerning the value of three mines from evidence heard.

There was a record in the recorder' office that the Lowell group had been transferred to the Copper Queen for $1,000,000 or $1,500,000. There are $500 in revenue stamps on the above deed. It was admitted that Mr. English was attorney for the Board during the equalization period. It was not true that because the county had been defeated in a former tax suit that Mr. Land urged this raise. The raise was not made for the purpose of reducing the tax rate. Mr. English was not employed upon a contingent fee, conditioned that he make the raises on plaintiff's property stick. The Board thought that if the property of the county were assessed at a fair valuation the rate would be reduced. Witness was asked whether he thought it a fair taxation to put on eight mines of this plaintiff a burden of $36,855 for territorial purposes, while 1368 patented mines throughout the territory only paid $19,197 to the territorial tax fund. Objection to this question sustained.

Supervisor George B. Reay was next called by plaintiff. He mined for the Copper Queen company for four years. Worked in Spray, Holbrook, Atlanta, Baxter and Silver Bear. Had not within past year examined mines of the Copper Queen named to him with a view to determining their value. Concurred in raise of $1,000,000 on the Silver Spray because he thought it was worth it. The same amount of ore was being taken out this year as when witness worked in it. Had no accurate knowledge of the number of tons of ore taken from the Silver Spray, or of its value. The Holbrook mine was raised $1,000,000 on the same evidence as was relied upon in the case of the Silverg Spray. The Board assumed these properties were each worth the amount to which they were raised. Thought the Copper Queen was worth $50,000 because it was contiguous to the other mines. Heard they were taking ore out of the Baxter, and that it was still valuable, and the Board acted upon the belief that the mine was worth $200,000; raised the valuation of the Dividend $200,000 for the reason that ore was being taken out. Raised Copper Jack and improvements $50,000 for the reason that nearly all of the Copper Queen buildings are on this mine, and the surface ground is made more valuable by reason of the improvements upon it. Merchandise raised $203,520 on Mr. Douglas' statement that on February the stock invoiced $280,000 They assessed merchandise at 75 per cent or 80 per cent of the value.

BISBEE JOTTINGS.

BISBEE, December 8, 1900.

The store windows are putting on a holiday appearance. The bright electric lights add much to their attraction.

The new chemical engine has proven a success in two different tests and stands ready at the door of the engine house.

Robt. Tate, who was the victim of an an attempted hold-up a few nights since while on his way home up Tombstone canyon, has purchased a new patent lever, rapid fire gun, as a safeguard in the future.

There will be an open air meeting this afternoon at 4 o'clock on the Library Plaza for the purpose of discussing matters of local interest.

Charles Thomas has been officially notified of his appointment by the board of supervisors as deputy constable.

Justice S. K. Williams sentenced a Mexican, fourteen years of age, to jail for twenty days for drawing his pocket knife and holding in a threatening towards a companion with whom he was quarreling

James Finch, late proprietor of the San Antonio ranch, was a visitor yesterday. Jim has a lease on one of the silver properties owned by the Greene Consolidated Copper company and is shipping ore to Hermosillo.

E. W. Newman's hardware store, on O. K. street was broken into last night and a Winchester rifle and several boxes of cartridges stolen.